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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT 30 1991

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
UACC MIDWEST, INC., d/b/a/ UNITED)
ARTISTS CABLE MISSISSIPPI GULF)
COAST, Complainant,) File No. PA-91-0005
)
versus)
)
SOUTH CENTRAL BELL TELEPHONE)
COMPANY, Respondent)

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OPPOSITION TO MOTION FOR SUMMARY DISPOSITION

South Central Bell Telephone Company ("South Central Bell") hereby opposes the Motion for Summary Disposition ("Motion"), which South Central Bell received from Complainant in the above captioned proceeding on October 30, 1991, for the reasons set forth below.

Complainant alleges in its Motion that it filed a Complaint with the Commission on September 10, 1991, concerning the pole attachment rates charged Complainant by South Central Bell. The Motion was the first notice received by South Central Bell from either Complainant or the Commission that a pole attachment complaint had been filed by Complainant.¹

The Motion alleges that Section 1.1407 of the Rules

¹South Central Bell did receive a service copy of the Complaint dated September 9, 1991. Under Section 1.47 of the Commission's Rules, however, service by mail may be made "on or before the day on which the document is filed". Since the service copy may be mailed at any time prior to the filing of the complaint, receipt of the service copy cannot be deemed to be notice that a complaint has been filed.

"required a response to be filed by October 10, 1991."

South Central Bell respectfully disagrees. In adopting Section 1.1407 of the Rules, the Commission stated:

"A complaint will be assigned a file number after cursory examination for completeness, i.e., compliance with the requirements listed in Section 1.1404 of the Rules. Such acceptance for filing will appear on public notices issued by the Commission. Responses, replies and all submissions or motions in these proceedings should include reference to the file number assigned to the initial complaint or Stay Petition." (Emphasis added).²

South Central Bell alleges on information and belief that no public notice of the filing of the captioned Complaint has been given by the Commission. South Central Bell had no knowledge that Complainant actually filed the captioned complaint, or that it had been accepted by the Commission, until today. South Central Bell is entitled to notice that a Response is required of it by the Commission. Such notice could come through actual notice, as is required by Section 208(a) of the Communications Act³, or through constructive notice, as contemplated by the Commission's Order adopting the procedures for pole attachment

²In the Matter of Adoption of Rules for the Regulation of Cable Television Pole Attachments, CC Docket No. 78-144, Memorandum Opinion and Second Report and Order, 72 F.C.C. 2d 59, 75 (1979).

³47 U.S.C. Sec. 208(a) states, in relevant part: "a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission"

complaints cited above. However, due process of law requires that in the absence of either actual or constructive notice of the filing of the Complaint, South Central Bell cannot be held to have waived any rights in this proceeding.

South Central Bell intends to respond to the captioned complaint. In light of the fact that South Central Bell did not receive notice of the filing of the Complaint until October 30, 1991, A Motion for Extension of Time to file a Response is being made forthwith pursuant to Section 1.46 of the Rules.


In any event, the instant Motion should be denied. Section 1.1407(d) of the Rules is permissive, not mandatory. Therefore, the Commission is not required to consider the factual allegations of the Complaint admitted. Under the circumstances, since South Central Bell had no notice that the Complaint had been filed, and intends to defend the Complaint on the merits, the Commission should not consider the material factual allegations of the Complaint admitted. In any event, as South Central Bell's Response will indicate, the principal issues in dispute between the

parties are matters of law, not fact, that preclude a
Summary Decision on behalf of Complainant at this time.

Respectfully submitted,

SOUTH CENTRAL BELL TELEPHONE
COMPANY

By its Attorney:

A handwritten signature in cursive script, appearing to read "M. Robert Sutherland", written over a horizontal line.

M. Robert Sutherland
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, Georgia 30367

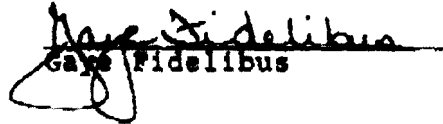
Phone: (404) 249-2647

October 30, 1991

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of October, 1991 serviced all parties to this action with a copy of the foregoing OPPOSITION TO MOTION FOR SUMMARY DISPOSITION by placing a true and correct copy of same in the United States mail, postage prepaid, addressed to:

Paul Glist
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006


Gaye Fidelibus